

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EUNICE KIPPINS,

Plaintiff,

- against-

AMR CARE GROUP, INC. and JILL SMITH,
individually,

Defendants.

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FEUERSTEIN, District Judge:

ORDER

19-CV-3120 (SJF)(ARL)

**FILED
CLERK**

11:15 am, Feb 09, 2021

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Before the Court is a Report and Recommendation (“the Report”) of the Honorable Arlene R. Lindsay, United States Magistrate, dated January 22, 2020, (1) recommending that Defendants’ motion to dismiss the amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be denied, and (2) advising *inter alia*, (a) that “[a]ny objections to th[e] Report . . . must be filed with the Clerk of the Court . . . within 14 days,” and (b) that a “[f]ailure to file objections within [14 days] waives the right to appeal the District Court’s Order.” Report at 12, Docket Entry (“DE”) [33] (citations omitted). A copy of the Report was served upon counsel for all parties via ECF on January 22, 2021. Despite such service, no objections have been filed, nor has any party sought an extension to do so. For the reasons set forth below, Magistrate Judge Lindsay’s Report is adopted in its entirety.

I. DISCUSSION

A. Standard of Review

Any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen (14) days after being served with a copy thereof. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2). Any portion of such a report and recommendation to which

a timely objection has been made is reviewed *de novo*. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3). The Court is not, however, required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. *See Thomas v. Arn*, 474 U.S. 140, 150, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985). Indeed, “[w]here parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)).

To accept the magistrate’s report and recommendation absent a timely objection, the court need only be satisfied that there is no clear error on the face of the record. *See* FED. R. CIV. P. 72(b); *Baptichon v. Nevada State Bank*, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), *aff’d*, 125 F. App’x 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b); *see generally King v. City of N.Y., Dep’t of Corr.*, 419 F. App’x 25, 27 (2d Cir. 2011) (summary order) (noting that the waiver rule is “nonjurisdictional” and, thus, the Court may excuse a violation thereof “in the interests of justice.” (internal quotation marks and citation omitted)).

B. Review of the Report

No party has filed objections to the Report within the time set by the Court. Since the parties were provided notice and an express warning of the consequences of a failure to timely file objections to the Report, their failure to object operates as a waiver of further judicial review. *See Caidor v. Onondaga Cnty.*, 517 F.3d 601, 602-03 (2d Cir. 2008); *Mario*, 313 F.3d at 766.

Thus, the Court “need only satisfy itself that there is no clear error on the face of the record to accept a magistrate judge’s report and recommendation.” *Safety-Kleen Sys., Inc. v. Silogram Lubricants Corp.*, No. 12-CV-4849, 2013 WL 6795963, at *1 (E.D.N.Y. Dec. 23, 2013). After a careful review of the Report, the Court finds no plain error in either the reasoning or the conclusions reached therein, and accordingly, adopts it in its entirety.

II. CONCLUSION

The Report is adopted in its entirety, and for the reasons set forth therein, Defendants’ motion to dismiss, DE [29], is denied.

SO ORDERED.

/s/ Sandra J. Feuerstein

Sandra J. Feuerstein
United States District Judge

Dated: Central Islip, New York
February 9, 2021